United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

APRIL TERM, 1902.

No 1211.

161

COLUMBIA RAILWAY COMPANY, APPELLANT,

vs.

MARTHA A. CRUIT.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED APRIL 25, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1902.

No. 1211.

COLUMBIA RAILWAY COMPANY, APPELLANT,

vs.

MARTHA A. CRUIT.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 19, 1902.

In the Court of Appeals of the District of Columbia.

COLUMBIA RAILWAY COMPANY, Appellant,
vs.
MARTHA A. CRUIT. } No. 1211.

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a Supreme Court of the District of Columbia.

MARTHA A. CRUIT
vs.
COLUMBIA RAILWAY COMPANY. } No. 43943. At Law.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration, etc.*

Filed May 21, 1900.

In the Supreme Court of the District of Columbia.

MARTHA A. CRUIT
vs.
COLUMBIA RAILWAY COMPANY. } At Law. No. 43943.

The plaintiff, Martha A. Cruit, a widow, sues the defendant, The Columbia Railway Company, a corporation duly organized under the terms of an act of the Congress of the United States and having its principal office in the District of Columbia, for that heretofore, to wit, on the 8th day of April, A. D. 1900, the said defendant was and now is the owner of a certain street railway operating in and upon the highways of the said District for the carrying of passengers for hire, and on the day and year aforesaid was also the owner of a certain railway car operated by electricity on the said railway and used for the carriage of such passengers; and the plaintiff says that on the day and year aforesaid she, the plaintiff, was received as such a passenger for hire by the defendant upon the said railway car whilst it was being operated upon the said railway, and that it then and there became and was the duty of the defendant to use due and proper care that the plaintiff should be safely carried thereupon and

allowed to alight therefrom at her destination without injury to her, but that the defendant, not regarding its duty in that behalf, did not use such due and proper care, but wholly neglected so to do, and so carelessly, negligently, and improperly conducted the said car that,

while the plaintiff was in the act of alighting therefrom
2 on H street north, at or about its intersection with Sixth street east, the said car having been brought to a stop for her to alight, through the negligence, carelessness, and improper conduct of the defendant, its agents and employees, the said car was suddenly started again before the plaintiff had reached a position of safety upon the ground, and the plaintiff, though herself exercising ordinary care, was thereby violently thrown to the ground, and was grievously injured about the hip and the body and the face, so that her said hip was broken and her face and body were greatly bruised, and she was thus and otherwise permanently injured, and since the happening of the said grievance the plaintiff has undergone great bodily pain and mental suffering, and will ever continue so to do, and has been put to great expense in being medically and surgically treated for her said injuries, to wit, to the expense of five hundred dollars ($500.00), to the damage of the plaintiff twenty thousand dollars ($20,000.00); wherefore the plaintiff claims twenty thousand dollars ($20,000), besides costs.

A. A. LIPSCOMB,
PHILIP WALKER,
Attorneys for the Plaintiff.

The defendant is to plead hereto on or before the twentieth day after service hereof, Sundays and legal holidays excepted; otherwise judgment.

A. A. LIPSCOMB,
PHILIP WALKER,
Attorneys for the Plaintiff.

3 *Plea.*

Filed June 19, 1900.

In the Supreme Court of the District of Columbia.

MARTHA A. CRUIT
vs.
COLUMBIA RAILWAY COMPANY. } No. 43943.

The defendant, The Columbia Railway Company, for plea to the declaration filed in the above-entitled cause, says that it is not guilty as alleged.

J. J. DARLINGTON,
R. B. BEHREND,
Attorneys for Defendant.

4 *Joinder of Issue.*

Filed Jun- 21, 1900.

In the Supreme Court of the District of Columbia.

MARTHA A. CRUIT
vs.
COLUMBIA RAILWAY COMPANY. } At Law. No. 43943.

The plaintiff joins issue on the defendant's plea.

A. A. LIPSCOMB,
PHILIP WALKER,
Attorneys for the Plaintiff.

Memorandum.

November 26, 1901.—Verdict for plaintiff for $7,000.

5 *Memoranda.*

December 13, 1901.—Motion for new trial continued to December 21.

December 20, 1901.—Motion for new trial continued to December 27.

December 23, 1901.—Motion for new trial continued to January 3, 1902.

January 3, 1902.—New trial granted unless plaintiff remits $3,000.00 of verdict.

Order for Remittitur.

Filed Jan. 6, 1902.

In the Supreme Court of the District of Columbia, the 6th Day of January, 1902.

MARTHA A. CRUIT
vs.
COLUMBIA R'Y CO. } At Law. No. 43943.

The clerk of said court will please enter remittitur for three thousand dollars of the verdict in this cause.

ANDREW A. LIPSCOMB,
PHILIP WALKER,
Attorney- for Plaintiff.

6 Supreme Court of the District of Columbia.

MONDAY, *January* 6, 1902.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

MARTHA A. CRUIT, Plaintiff,
vs.
COLUMBIA RAILWAY COMPANY, Defendant. } At Law. No. 43943.

The plaintiff, by her attorneys, having filed herein a remittitur of three thousand dollars, as heretofore ordered, it is considered that the defendant's motion for a new trial be, and hereby is, overruled and judgment on verdict ordered, less the remittitur. Therefore it is considered that the plaintiff recover against the defendant four thousand dollars ($4,000) for her damages, as aforesaid assessed, together with her costs of suit, to be taxed by the clerk, and have execution thereof.

The defendant notes an appeal to the Court of Appeals, and the penalty of the bond, to act as a supersedeas, is fixed in the sum of $5,000.00.

It is ordered that the term be, and hereby is, prolonged and extended for the period of thirty-eight days for the purpose of settling a bill of exceptions in the above cause.

7 *Memorandum.*

January 24, 1902.—Appeal bond filed.

Memoranda.

February 14, 1902.—Time to settle exceptions extended to February 28, 1902.

February 18, 1902.—Bill of exceptions submitted to court.

March 7, 1902.—Time to file transcript in Court of Appeals extended 30 days.

Supreme Court of the District of Columbia, April 4, 1902.

MARTHA A. CRUIT, Pl'ff,
vs.
COLUMBIA RAILWAY Co., Def't. } 43943.

8 Now comes here again the defendant, by its attorneys, and prays the court to sign, seal, and make part of the record its bill of exceptions taken during the trial hereof and submitted to the court on the 18th day of February, 1902, now for then; which is accordingly done.

Memorandum.

April 4, 1902.—Time to file transcript in Court of Appeals extended to April 25, 1902.

9 *Bill of Exceptions.*

Filed April 4, 1902.

In the Supreme Court of the District of Columbia.

MARTHA A. CRUIT
vs.
COLUMBIA RAILWAY COMPANY. } At Law. No. 43943.

Be it remembered at the trial of this cause, on the 19th, 20th, 21st, and 25th days of November, 1901, before the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, and a jury empaneled and sworn to try the issue between the parties, the plaintiff, in order to maintain the issue on her part joined, produced as a witness the plaintiff, MARTHA A. CRUIT, who testified, by deposition taken on the 14th day of February, 1901, in substance as follows:

That she is seventy-eight or eighty years old and lives with her eldest daughter; that on the 8th day of April, 1900, Palm Sunday, she was a passenger on the car of the Columbia Railway Company, going east, which car stopped at the corner of Sixth and H streets northeast; that she was in the act of alighting, having waited until the car stopped before she started to alight, and had one foot on the board, when the car jerked, throwing her to the ground and injuring her; that she hardly knows what else took place because she was hurt beyond nature and was very sick at the stomach; that Dr. Bayne, her physician, set her limb, which had been broken; that she cannot bend it, and has to move it with her hands or get
10 some one to move it; that she was in bed until August; that she has pains at times now; that she has suffered more than she can tell and still suffers; that her health was always pretty good before that; that she had to have morphine until she could not rest, being under its influence a great deal while the doctor came; that the doctor (Bayne) came on the Wednesday following the accident, which occurred on Sunday.

On cross-examination this witness testified that she does not know exactly whether she was sitting down or not when the car stopped; that two or three other passengers got off on the north side of the car at the point of the accident, plaintiff getting out on the south side; that after the accident happened she said to the conductor, "You do not me blame for this," and the conductor said, "Sign your name there, Madame," or something like that; that she told him she could not write; that she has no recollection of telling the conductor that it was her fault, and that it was not necessary to take her name; that she was thrown on her left side; that Mr. Hoover, the defendant's claim agent, called on her; that she does not know whether she told Hoover that she fell in getting off the car; that she started to walk and fell again; that she did not talk to him much, as she was feeling so poorly.

On redirect examination the plaintiff testified that she could not say whether the doctor had given her morphine or something else when Mr. Hoover came; that she had taken something.

Thereupon, to further maintain the issue upon her part joined, the plaintiff produced as a witness HARRY COZLIN, who testified that he is a paper-hanger, living at 633 K street northeast; that at the time of the accident he was standing on the corner of 6th and H streets northeast; that he saw the car stop; that it was be-
11 tween 4.30 and 5.30 p. m. on Palm Sunday; that he did not know the plaintiff at the time; that there were at least eight boys standing in the crowd with him; that they usually congregated there on Sunday afternoons; that he looked up and saw the car come to a stop; that the car was coming from the west; that the old lady got up out of her seat and caught hold of the handle and put out her right foot foremost; that she had one foot on the running-board, had hold of the handle of the car with one hand, and the other foot had not touched the ground, when he saw the car start suddenly and stop just as suddenly as it had started, and the lady was thrown to the ground; that the car went about three inches and no more; that he saw two policemen pick the lady up and stand her on her feet; that the policemen let go of her and she fell to the ground again; that then they kicked her up and carried her to a porch next to the corner.

On cross-examination the witness testified that the car stopped before the lady arose from her seat; that the car started suddenly forward, and, without anybody's asking it to stop, or ringing a bell for it to stop, or saying the lady was being hurt, or anything of the kind, it stopped just as suddenly as it had started; that the plaintiff's foot was about two inches from the ground when the car started; that the officer who assisted the plaintiff after the accident was following along after the car on a bicycle, and as soon as the lady fell off he pushed his bicycle to the curb and sprang to her assistance; that witness is in the habit of looking at every car that stopped on that corner, and was at that time watching for an acquaintance he was expecting to see; that he did not hear the bell ring while the plaintiff was getting off, but could not say that it did.

12 Thereupon, further to maintain the issue on her part joined, the plaintiff produced as witnesses RICHARD A. BATES, a lithographer, and JAMES WEBSTER MANNING, a student in the high school, two other boys who were in the crowd with the witness Cozlin, and who testified to substantially the same facts. The witness Bates testified, in addition, that while the plaintiff was in the act of alighting, outside foot first, with one foot on the ground and one on the running-board, he heard the bell ring once, not twice, as usual; that he heard no bell for car to stop after it started; that he does not know if any one else got off the car at that point; that the plaintiff fell with her feet about the middle of the car, and lay on her side, with her head towards the front of the car, right alongside of the running-board and about a foot from it.

The witness MANNING testified, in addition, that the rear end of the car stopped on the east side of Sixth street, about the centre of the sidewalk; that he noticed no one but plaintiff get off of the car; that the plaintiff's foot was four inches from the ground when car started forward; that car started immediately after bell rang; that he has no positive recollection of the bells having rung, but his best recollection and impression is that it did; that he heard no bells for car to stop after it started; that he recollects plaintiff saying, before she fell the second time, that she was all right.

Thereupon, further to maintain the issue on her part joined, the plaintiff produced as a witness Miss JENNIE LANE, who testified that she was a passenger on the same car that the plaintiff was on, and that she got off the car at the same point where plaintiff at-
13 tempted to alight; that the plaintiff was in front of her on the running-board, she (Lane) being also on the running-board, when the car started forward; that witness jumped and plaintiff fell; that witness would have fallen off as plaintiff did if she had not jumped; that conductor pulled bell for car to start; that car had come to full stop when plaintiff was on the running-board; that she did not wait to see what happened, but left the scene immediately; that she does not know how far the car moved before it stopped after the accident; that she did not wait to see who picked plaintiff up.

On cross-examination the witness Lane testified that she did not know whether an electric bell was rung or not for car to start; that car stopped when conductor saw plaintiff had fallen; that she does not know when the conductor saw plaintiff; that she noticed that the conductor saw plaintiff fall; that after plaintiff fell she (Lane) looked around at conductor; that the conductor saw plaintiff, rang bell, and car stopped; that she remembers hearing bell for car to stop after plaintiff fell.

The plaintiff, further to maintain the issue on her part joined, produced as a witness BENJAMIN F. WILLIAMS, a bicycle policeman, who testified that he saw the car stop at Sixth and H streets in a hurry; saw the plaintiff get up, bell sounded, and car gave sudden start and stopped suddenly; that the conductor rushed to the plaintiff and said, "Lady, is it my fault?" and the plaintiff said, "It is nobody's fault;" that he and Lieutenant Moore carried the plaintiff to 607 or 609 H street; she sat there a little while, when Dr. Bliss came over, and at his request she was taken to his house and
14 later to her home; that the car moved six inches after the tap of the bell, while the lady was on the running-board.

On cross-examination this witness testified that he was standing on the northeast side of Sixth street and H streets, right near the railroad track, with his bicycle; that he stopped at Sixth street to call the motorman down for running the car too fast, but he did not have time to do it; that the conductor went on pulling the bell "rush, rush, rush;" that he did not see the conductor before the

accident; that the car was pretty crowded—people were going to an excursion—and the conductor was standing amongst the crowd on the back end; that he is positive but one bell was rung for the car to start; that car was going so fast that it could not stop at corner, but stopped in front of 607 or 609 H street; that no other bell was given after the one was given for the car to start to bring the car to a stop; that he was looking at the car and saw what happened there; that he is a pretty wide-awake officer and generally sees what happens out northeast.

The plaintiff, further to maintain the issue on her part joined, introduced as a witness Dr. JOHN W. BAYNE, who testified that he was called in consultation and first saw the plaintiff the third day after the accident; that she suffered an impacted fracture through the neck of the femur, a portion of what we call the hip-bone, and as a result thereof there was a shortening of the bone and leg of from one and a half to two inches; that she is unable to go upstairs at all and unable to walk about the floor, except on crutches; that he never saw the plaintiff before the accident, but from what he could see she was of a very feeble and nervous constitution and temperament, and that probably was naturally excited and very much increased by the injury which she had suffered; that she was in bed three or four months, during eight weeks of which she was in an immovable position; that when she got out of bed, because of her age and feebleness, she had not the strength to use crutches at first; that plaintiff cannot bear any appreciable weight on the limb; that for a year she had to be carried in a rolling chair, and even now when she goes out she goes in that chair.

On cross-examination this witness further testified that when he last saw the plaintiff, October 1st, 1901, she was better able to move on crutches; that she did not seem to be suffering then; that she has not ceased suffering, but she has intervals of rest and comfort; that he never saw her before the accident, but should judge from her condition when he did see her that plaintiff was a feeble woman before the accident.

The plaintiff, further to maintain the issue on her part joined, introduced as a witness Dr. JAMES E. BLISS, who testified that after the accident he went across the street and suggested that the plaintiff be brought to his office, No. 606 H street northeast, which was done; that she was suffering pain and some shock; that he attended her three days.

On cross-examination he testified that she was still suffering from shock on the evening of the accident, but not as much as when injured; that she was still suffering from shock on the Monday morning following the accident, but not as much as on the night before; that she had perfect control of her mental faculties at this time; that she said nothing as to the accident, but only complained of her condition.

16 The plaintiff, to further maintain the issue on her part joined, produced as a witness LILLIE F. V. CRUITT, her daughter, who testified that she is employed at the Pension Office; that her mother lived with witness' sister on Third street, where witness saw her in bed, in the middle room, on the first floor, about an hour after the accident; that plaintiff has since remained there; that the plaintiff was attended by a trained nurse for ten days after the accident, and since then constantly by members of her family; that plaintiff is almost helpless and has to be waited on on all occasions; that she moves about with a kind of wiggle, with the help of two crutches, on a smooth surface, but cannot go up or down stairs; that plaintiff suffers a great deal of pain all the time.

On cross-examination she testified that plaintiff's pain is very severe, especially in damp weather; that witness knows she suffers, because she bites her lips to prevent its being known, and when she sits keeps her hand under her all the time to keep herself from coming down on the cushion; that plaintiff is between 73 and 75 years old; maybe 75.

The plaintiff, to further maintain the issue on her part joined, produced as a witness ALICE A. CRUIT, her daughter, who testified that she first saw her mother after the accident when she was brought to witness' house, about five o'clock. The plaintiff lived with witness; that she was then suffering very much with her hip; that witness had to cut her clothes off to get her into bed; that she has since required constant attention; that she can move from one chair to another with crutches; that her health was very good before the accident, and she was able to go about by herself everywhere, without assistance; that she is over 70 years old.

17 On cross-examination she testified that the plaintiff cannot get about much in a rolling chair, as she suffers too much pain. She has always supported her mother; that witness is employed at the Bureau of Engraving and Printing; that plaintiff told her all about the accident at about 5.30 the same evening.

Thereupon, to support the issue on its behalf joined, the defendant produced as a witness the conductor, JAMES W. PHELPS, who testified that the car stopped on the east side of H street; that he was seeing that the passengers who alighted from the car on the north side thereof, where the reverse track is, got off in safety; that before giving any signal for the car to proceed he looked on the south side of the car and saw plaintiff lying on the ground; that he did not see her fall from the car; that he was standing on the rear platform of the car, which was crowded, so that he had to stand on tiptoe to see over their heads; that after the car stopped it did not start again before he noticed the plaintiff on the ground; that he approached the plaintiff after the accident, and she said to him that she was not hurt much, but was shaken up somewhat, and that she did not know how it happened, and that it was her own fault; that he asked her to sign a release blank, which the company requires

conductors to have signed in cases of accidents, which she refused, stating that it was not necessary; that she was lifted to her feet and was apparently all right; that witness pulled the bell to start, and the car started off again; that immediately after the car started he saw that the plaintiff had fallen again, when witness gave signal for car to stop the second time.

18 Thereupon, further to maintain the issue on its part joined, the defendant produced as a witness the motorman, THOMAS H. ROBEY, who testified that he did not see the accident; that the car stopped on the east side of Sixth street; that it stopped longer than usual; that he looked back to ascertain the cause and noticed people helping plaintiff up; that the car stopped but once up to this time at that point; that after the plaintiff was helped up and she said she could get along all right, witness got two bells to proceed; that immediately after receiving two bells he got one to stop, and did so instantly; that if he received one bell when car was still he would not move.

On cross-examination this witness testified that he heard plaintiff say after she fell the first time that she was not hurt, and that she did not know how the accident happened; that it was all her own fault.

Thereupon, further to maintain the issue on its part joined, the defendant produced as a witness HOWARD M. ARNISTEAD, who testified that he was sitting in the seat in front of plaintiff; that the car stopped and remained standing rather long; that he looked back to ascertain the cause and saw plaintiff getting off slowly; that when she let go the handle and her right foot struck the pavement she fell, and witness jumped off and helped her; that the conductor came up to plaintiff and asked her for her name, which, after complainant had refused it, witness advised her to give; that plaintiff told conductor it was her own fault; that plaintiff told those present that she could get along alone, and witness got back on the car; that

19 he was standing on the running-board, car moved slightly, when witness noticed that plaintiff fell again; that car came to a stop again; that he got off again and assisted her; that he was an employé of the Government Printing Office, having been there for fourteen years.

The defendant, further to maintain the issue on its part joined, produced as a witness Lieutenant JAMES A. MOORE, who testified that he sat in the seat in front of plaintiff; that he heard something fall to the pavement, looked around, and saw plaintiff, and that about that time or about the time she fell car came to a stop; that he jumped off, and, with the assistance of others, picked plaintiff up; that she said she could go alone and could take care of herself; that they let go of her and she fell again; that the car stopped but once at that point; that the conductor had a pad on which he wanted plaintiff to sign her name, which she refused, saying that she was to blame herself, and that there was no use signing it.

On cross-examination this witness testified that at the time plaintiff said it was her fault she also said she was not hurt; that she was in a state of excitement.

The defendant, further to maintain the issue on its part joined, produced as a witness JOHN SHEPARD, who testified that he was a surveyor, living at Bristol, Maryland; that he was sitting in the second or third seat from the rear of the car and back of the plaintiff, on the south side; that the car slowed up at Sixth street, and, before it stopped, several ladies directly in front of him arose to get off; after these ladies cleared the car, witness noticed plaintiff in the street; that he did not see her fall; that car was standing
20 still when the ladies got off; that plaintiff could not have gotten off before car stopped, because witness would have seen her from his position; that he could see all along the street, until the ladies obstructed his view, then could see no more in that direction; that he did not observe the car start forward while the ladies were getting off; that they arose and stood still until the car stopped; that the car stopped once, and, when it stopped, plaintiff was on the pavement; that he did not observe it move until plaintiff was lifted up; that after plaintiff was lifted to her feet and before she fell the second time car moved forward one-half its length; that he did not hear any of the conversation.

The defendant, further to maintain the issue on its part joined, produced as a witness RENA JACKSON, who testified that she was a passenger on the car from which the accident occurred, sitting right in the rear of the plaintiff; that before the car had stopped at the corner of 6th and H streets, and while it was still in slow motion, the plaintiff got off; that the car was just about stopping when the plaintiff alighted.

The defendant, further to maintain the issue on its part joined, produced as a witness R. C. THOMPKINS, a practicing physician, whose testimony was used in the case in the form of a written deposition. He testified that he was a passenger on the car in the rear of the plaintiff, and that his impression was that the lady stepped off from the car just as it was coming to a stop; that he heard the plaintiff state, at the time of the accident, that the accident occurred through her own fault and not the company's.

The defendant, further to maintain the issue on its part
21 joined, produced as a witness GEORGE P. HOOVER, the claim agent of the defendant, who testified that he had an interview with the plaintiff on the day following the accident, between ten and eleven in the morning; that he was admitted to the house by a lady to whom he introduced himself; that he thereupon introduced himself to the plaintiff and questioned her in regard to the happening of the accident, taking down the questions asked and the answers given stenographically, and that the plaintiff answered all

of his questions intelligently; that plaintiff told him that she could not tell how the accident happened; that she knows she fell and tried to get up and fell again; that she did not know whether the car had come to a stop or not, but thinks it had; that she did not remember whether she stepped off of the car before it stopped or not.

The defendant, further to maintain the issue on its part joined, produced as a witness JOHN TILLMAN HENDRICK, a life-insurance expert, who testified that at the age of seventy-eight the mortality tables showed an expectancy of five and one-tenth years in males and ten per cent. less in females; that at the age of eighty the expectancy in males was about four and four-tenths years, and in females four years.

The defendant, further to maintain the issue on its part joined, produced as a witness Dr. JAMES KERR, who testified that in the case of old people the femur, a fracture of which plaintiff sustained, was very brittle and was liable to break very easily.

The defendant, further to maintain the issue on its part joined, produced as a witness JAMES FORSYTHE, chief clerk of the surveyor's office of the District, who testified that it was about
22 ninety-one feet from the east curb line of Sixth street to 609 H street northeast.

Thereupon, the foregoing being all the evidence on both sides, the court, at the plaintiff's instance, granted the following prayers:

"*Plaintiff's Prayer No.* 1.

"If the jury find from a preponderance of the evidence that while the plaintiff was in the act of alighting from the car of the defendant after the same had come to a full stop, the car was suddenly started whereby she, while herself using proper care, was thrown to the ground and injured, then they must find for the plaintiff."

"*Plaintiff's Prayer No.* 2.

"If the jury find from the preponderence of the evidence that the plaintiff immediately after or on the day after the accident made statements in relation thereto at variance with those made in her deposition, which has been read in evidence, and if they further find that she, at the time of making the former statements, was suffering from shock and pain, they are to look at the difference of the statements in the point of view of her condition when making each, and to consider what effect the shock and pain from which she was suffering, if she was so suffering, when she made the former statement may have had on her ability to correctly ascribe the true cause of the accident."

The defendant objected to the granting of the plaintiff's second prayer on the ground, amongst others, of the insufficiency of the evidence to support said instruction; but its objection was overruled, and an exception was then and there noted.

23 The defendant presented to the court thirteen various prayers, the first eleven of which were granted, and the last two of which were refused, and to the refusal to grant the last two prayers, namely, the twelfth and thirteenth, the defendant then and there excepted. The prayers Nos. twelve and thirteen of the defendant were as follows:

"No. 12. If the jury shall find from the evidence that the plaintiff, immediately after the accident, said that she was to blame herself for it, or used language to that effect, they should consider that in weighing her evidence, and it would have a tendency to weaken or destroy it; and they are further instructed that, if they find that she so stated, there is no evidence in the case from which they can find that, at the time she made said statement, her mind was in such a state that she did not fully understand what occurred and what she said.

"No. 13. If the jury shall find from the evidence that the plaintiff, on the day after the accident, said that she was to blame herself for it, or used language to that effect, they should consider that in weighing her evidence, and it would have a tendency to weaken or destroy it; and they are further instructed that if they find she so stated, there is no evidence in the case from which they can find that, at the time she made said statement, her mind was in such a state that she did not fully understand what occurred and what she said."

After the court instructed the jury, the jury retired to consider of their verdict, and returned a verdict for the plaintiff in the sum of seven thousand dollars; which verdict, upon motion of the

24 defendant for a new trial, the trial court ordered to be set aside, unless by a certain day the plaintiff should enter a remittitur in the sum of three thousand dollars, which the plaintiff accordingly did; and to the judgment of the court in permitting the plaintiff to file a remittitur, instead of setting aside the verdict *in toto*, and granting a new trial, this defendant then and there excepted.

All of the exceptions contained in the foregoing bill of exceptions were duly noted by the court in its minutes at the time the same were severally taken and before the jury retired to consider of their verdict, except the last one, and the said several exceptions are signed as the several exceptions taken at the trial of the above-entitled cause, and made a part of the record this 4th day of April, 1902, as and for the 18th day of February, A. D. 1902.

E. F. BINGHAM, [SEAL.]
Chief Justice.

(Office.)

25 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 24, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 43943, at law, wherein Martha A. Cruit is plaintiff and The Columbia Railway Company is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 12th day of April, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1211. Columbia Railway Company, appellant, *vs.* Martha A. Cruit. Court of Appeals, District of Columbia. Filed Apr. 25, 1902. Robert Willett, clerk.